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No. 1,003

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

JEFFERSON CITY CABINET CO., *Petitioner,*

v.

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, AND LOCAL UNION 748 OF INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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Opinions Below

The opinions and orders of the District Court are unreported and are printed in the Record at pp. 34a, 48a, and 63a. The opinion of the Court of Appeals for the Sixth Circuit is reported at 313 F.2d 231 (Petition, Appendix, pp. 9-19).

Jurisdiction

The jurisdictional requisites are adequately set forth in the petition.

Question Presented

Where a collective bargaining agreement provides for arbitration at the request of either party of all claimed violations of the agreement by the employer or the unions, did the District Court and Court of Appeals properly decide that a claimed breach of the no-strike, no-lockout provisions of the agreement by the unions was subject to arbitration?

Statute Involved

Section 301(a) of the Labor Management Relations Act, 1947, 290 U.S.C. § 185(a) is the pertinent statutory provision. It appears in the Petition at page 3.

Statement

Petitioner entered into a collective bargaining agreement with Respondent Local 748 on September 12, 1958, effective until May 1, 1961 (Exhibit A, 7a). On April 19, 1960, the agreement was amended to make Respondent, International a party to the existing agreement between the Company and Local 748 by inserting its name in Article I, Section 1 of the agreement (Exhibit A, 7a, Exhibit B, 32a).

Article VII of the agreement provides a four step grievance procedure. The fourth step calls for presentation of a grievance to the plant manager or his designated representative, with a meeting to be held between the Local Grievance Committee, an International representative, and the plant manager. (19a-20a).

Section 10 of Article VII provides specifically for the filing of grievances by the Company against the Union at the fourth step of the procedure (22a).

As stated in Article VII, Section 5, "*Any disputes* not settled under the above procedure" may be appealed to arbitration (21a, emphasis added).

Article VIII, Section 1 provides more specifically that "A claim that the Company *or the Union has violated some provision of this contract* or failed to perform some obligation assumed under this contract is an arbitrable grievance." (22a, emphasis added)

Consistent therewith, the authority conferred upon an arbitrator in Article VIII, Sec. 1, (d), includes "the interpretation and application of the express terms and conditions of this Agreement" and "what is necessary for the interpretation and application of this contract or the obligation of the parties under this contract" (23a).

In its complaint, Petitioner sought monetary damages, alleging that members of the defendant Unions employed at plaintiff's Jefferson County, Tennessee, plant, went on strike on or about February 7, 1961, that defendants caused and induced the strike, and that the strike was in violation of the no-strike, no-lockout provisions of the collective bargaining agreement.

Respondents sought dismissal, or alternatively a stay, of this action, contending that Petitioner's claim was subject to arbitration. Disputing Petitioner's assertion that the strike was caused by a single dispute or grievance, respondents filed affidavits to show that a large backlog of grievances filed by a large number of employees existed at the time of the walkout and strike and that these grievances had accumulated over a period of months prior to February 7, 1961. Due to the dilatoriness of Petitioner, contrary to its obligation set forth in Article VII, Section 1 of the agreement, the grievance procedure had broken down and had become ineffective, causing considerable unrest and tension among Petitioner's employees. Petitioner's demonstrated unwillingness to process grievances with defendants resulted in the events of February 7, 1961.

(40a, 43a, 57a) Respondents disputed Petitioner's claim that they breached the agreement under the circumstances. There were thus substantial issues of fact and of the interpretation to be given the no-strike, no-lockout provisions of the agreement which required resolution in determining the merits of Petitioner's claim.

The District Court dismissed the complaint, finding that the claimed violation of the no-strike provisions of the agreement was clearly referable to arbitration under the terms of the collective bargaining agreement (48a, 63a).

The Court of Appeals affirmed the dismissal, finding that the provisions of the collective bargaining agreement provided for arbitration of the violation of the agreement claimed by Petitioner, and rejecting the contention that Respondents by their conduct had lost the right to such arbitration.

ARGUMENT

I. There is No Inconsistency Between the Decision Below and the Decisions of This Court

The Court below agreed with the District Judge that in view of this Court's decision in the *Drake Bakeries* case[1]

> "[I]t was not the law that the question of liability for violation of a no-strike provision could not be submitted to arbitration, but that *it was a question whether under the provisions of the bargaining agreement in question such an issue was an arbitrable one.*" (Petition, Appendix, p. 17, emphasis added).

Petitioner nonetheless asserts that the court below "interpreted and applied *Drake* as requiring a holding that the no-strike clause and grievance provisions are not mu-

[1] *Drake Bakeries* v. *Local 50, American Bakery Workers*, 370 U.S. 254.

tually dependent covenants" and that the Court misinterpreted and misapplied *Drake*, "By failing to consider the no-strike provisions in their context." (Petition, p. 7).

It is apparent that Petitioner has misinterpreted the decision of the Court below, and that the Court below faithfully construed and followed the principles of *Drake*.

Petitioner also asserts that the decision below is inconsistent with the principles of the *Atkinson* case.[2] This assertion merely raises a question of the interpretation of the April 19, 1960, amendment to the collective bargaining agreement (Petition, p. 8). Petitioner claims that the International did not thereby become a party to the arbitration provisions of the agreement. The courts below, interpreting that amendment together with the underlying agreement, held that Petitioner had agreed with both the Local and the International to arbitrate claims of violation of the collective bargaining agreement. Indeed, Petitioner, when it commenced this action, appeared to regard the agreement as clear in this respect. In its complaint initiating this action, it alleged:

> "The plaintiff and the defendants, International Union and Local Union, are and have been at all pertinent times prior to, during and subsequent to on or about February 7, 1961, parties to a collective bargaining contract as amended, Exhibits 'A' and 'B' attached hereto and made a part hereof, which prescribes and regulates the wages, hours and working conditions of most of the employees of the plaintiff's Jefferson County, Tennessee plant." (5a-6a)

Even after Respondents moved to dismiss or stay this action on the ground that the damage claims against both the Local and the International were subject to arbitration,

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[2] *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238.

Petitioner alleged in support of its motion for summary judgment that there was no issue of fact except as to the amount of damages (32a, 35a). Petitioner did not contend that it had no arbitration agreement with the International until this matter reached the Court of Appeals.

The question as to the existence of the Company's obligation to arbitrate disputes with the International was thus not only a routine question of contract interpretation properly decided below, but was belatedly raised.[3] Nothing in the decision below stands for the proposition that a party may be required to submit a dispute to arbitration in the absence of an agreement to do so.

II. There Is No Issue of Importance Raised by the Petition

In the *Drake Bakeries* case, *supra*, this Court set forth the principles to be followed in determining whether claims of breach of no-strike provisions are arbitrable, and whether or not the promise to arbitrate has been so repudiated by one party as to excuse the other party from performance. There is no claim that any further principle remains to be established in this case. Instead, Petitioner asserts that there are "questions of the fact and effect of such repudiation" presented (Petition, p. 5). There would be little question as to the effect of repudiation if such had been found, but it was not. The Court below considered and rejected the contention of repudiation in its initial decision in this case and in its companion case and in rejecting petitions for rehearing in both cases.[4]

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[3] The Court below not only correctly construed the agreement, but its decision also was warranted because of Petitioner's inconsistent position in its complaint. *Corbin* v. *Baltimore & Ohio R.R.*, 234 F. 2d 78 (C.A. 6); *Hutchinson* v. *Fidelity Inv. Ass'n*, 106 F. 2d 431, 436 (C.A. 4); *Ford Motor Co.* v. *Myers*, 64 F. 2d 942, 943 (C.A. 6).

[4] The companion case, *Jefferson City Cabinet Company* v. *Local Union 748 of International Union of Electrical, Radio and Machine Workers*,

Petitioner attempts to imbue with some magical significance the fact that the no-strike, no-lockout obligation is referred to twice in the agreement in this case rather than once as in *Drake*. But this fact does not alter the applicable principles. In each case it was necessary to determine the significance of the obligation, not its form. This was faced and decided by the Court below, and no reason has been advanced why this Court should now be required to consider this question of contract interpretation.

The issues raised by Petitioner in both its questions are narrow and have no impact beyond this case.[5] Contrary to the contention of Petitioner, review of this decision is not necessary to the protection of the public interest in peaceful settlement of disputes. The ultimate question is not whether the no-strike provision is to be enforced, but whether it is to be enforced in the courts or by arbitration in accordance with the agreement of the parties. The public has no interest in protecting one party to an arbitration agreement from enforcement of that agreement when it later seeks to avoid arbitration. Indeed, as this Court has made abundantly clear, the public interest lies in having both no-strike provisions and agreements to arbitrate disputes arising under collective bargaining agreements, enforced. *Drake Bakeries* v. *American Bakery Workers*, 370 U.S. 254, 263-264.[6] The only question in this case relates to "the particular decision reached in [an] individual

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AFL-CIO, 314 F. 2d 192, is the subject of the Petition for Certiorari in No. 1004. As the decision of the court below in that case indicates, Petitioner's conduct was inconsistent with its later claim of repudiation. See Appendix to Petition in No. 1004 at page 12.

[5] Despite Petitioner's unsupported assertion, Respondents do not recognize the provisions of this contract as typical.

[6] See also *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238, 241 where the test of arbitrability set forth in *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574, is employed.

controversy'' which, Petitioner appears to concede, does not justify the grant of its Petition. (Petition, p. 6).

Conclusion

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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